

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

---

FREEDOM FROM RELIGION  
FOUNDATION, INC., ANNE NICOL  
GAYLOR, ANNIE LAURIE GAYLOR,  
PAUL GAYLOR, DAN BARKER,  
PHYLLIS ROSE, and JILL DEAN,

Plaintiffs,

v.

PRESIDENT BARACK OBAMA,  
WHITE HOUSE PRESS SECRETARY  
ROBERT L. GIBBS, WISCONSIN GOVERNOR  
JIM DOYLE, and SHIRLEY DOBSON,  
CHAIRMAN OF THE NATIONAL DAY  
OF PRAYER TASK FORCE,

Defendants.

---

Case No. 08-CV-588

**FEDERAL DEFENDANTS' MOTION TO DISMISS  
THE FIRST AMENDED COMPLAINT**

Defendants President Barack Obama and White House Press Secretary Robert L. Gibbs (collectively "Federal Defendants"), by undersigned counsel, hereby move to dismiss the First Amended Complaint (Dkt. No. 38, 02/10/2009) with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dismissal is appropriate pursuant to Rule 12(b)(1) because plaintiffs lack standing and because plaintiffs' claims regarding presidential prayer proclamations present insurmountable justiciability problems. Dismissal is appropriate pursuant to Rule 12(b)(6) because plaintiffs have failed to state a claim upon which relief can be granted. The grounds for this motion are set forth at length in the Memorandum of Law in Support of the Federal Defendants' Motion to Dismiss the First Amended Complaint being filed herewith.

Pursuant to this Court's Briefing Guidelines, and due to the complexity of issues raised by plaintiffs' First Amended Complaint and this motion to dismiss, counsel for the Federal Defendants is available for oral argument, should the Court determine that such an argument would be helpful.

Dated: March 9, 2009

Respectfully submitted,

MICHAEL F. HERTZ  
Acting Assistant Attorney General

JAMES GILLIGAN  
Assistant Branch Director

/s/ Brad P. Rosenberg  
BRAD P. ROSENBERG (DC Bar 467513)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Tel: (202) 514-3374  
Fax: (202) 616-8460  
brad.rosenberg@usdoj.gov

Mailing Address:  
Post Office Box 883  
Washington, D.C. 20044

Courier Address:  
20 Massachusetts Ave., N.W.  
Washington, D.C. 20001

COUNSEL FOR DEFENDANTS  
PRESIDENT BARACK OBAMA AND  
WHITE HOUSE PRESS SECRETARY  
ROBERT L. GIBBS

**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2009, I electronically filed a copy of the Federal Defendants' Motion to Dismiss the First Amended Complaint using the ECF System for the Western District of Wisconsin, which will send notification of that filing to all counsel of record in this litigation.

/s/ Brad P. Rosenberg  
Brad P. Rosenberg